



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

**WHEN LAND IS SOLD FOR DELINQUENT TAXES, AND
PURCHASER FAILS TO HAVE DEED EXECUTED,
WITHIN THE STATUTORY PERIOD, WHAT IS THE
CONDITION OF THE TITLE?**

By J. F. Bouchelle, Charleston, W. Va.

When land is returned delinquent for the nonpayment of taxes and sale thereof regularly made to an individual, what is the condition of the title between the time of purchase and execution of deed? West Virginia Code, § 24, ch. 31, provides that no deed for real estate sold at a tax sale shall be obtained by the purchaser after five years from the date of sale. Virginia Code, § 655, enacts that a tax deed to purchaser shall not be executed until the expiration of two years from the date of sale. Taking for granted a case where the owner does not redeem within the time allowed by statute, and the purchaser does not call for a deed, within five years under West Virginia statute, under Virginia statute until a lapse of an indefinite period from date of sale, who has the title, the state, the owner or the purchaser? The authorities are not very clear, nor are they numerous, upon the point. The courts seem to hold the following views:

First. Title remains with the former owner until the expiration of the redemption period and delivery of deed to the purchaser, the latter acquiring simply a lien for the amount of taxes paid and penalties, interest, etc.

Second. The owner is divested of his estate, and the purchaser acquires an equitable title.

In support of the second proposition, reference is made to Minor on The Law of Tax Titles in Virginia, p. 157, where it is said: "But the correct view would seem to be that, although the title is not complete and absolutely vested in the purchaser until the execution of the deed, yet the former owner is divested of it at the time of the sale, at least conditionally, and the purchaser from that time acquires an equitable and defeasible title, capable of being extinguished if the owner redeems it according to law, but liable to ripen into a legal title upon the acquisition of a deed." This writer bases his statement upon the peculiar phraseology of § 646, Va. Code, which provides in what manner

the purchaser may enter upon and take possession of the land when the owner is not in actual possession thereof; but does not purport to affect the title to the land, saying expressly that certain acts may be done without a deed, and, of course, without any color of title.

Reference is also made to *Watkins v. Eaton*, 30 Me. 535, 50 Am. Dec. 637; and *Cromelien v. Brink*, 29 Pa. State 525. In the last case it was said that the owner would be compelled to resort to an action of ejectment against purchaser at tax sale in possession. An early New York case, *Hubbell v. Weldon*, Hill & Denio 139, held, "assuming a tax sale of land to be valid, the owner or occupant is to be regarded afterwards as holding in subordination to the title of the purchaser." See, also, *Hotson v. Wetherby*, 88 Wis. 324, where it was held, that there was no presumption of abandonment, in absence of statute, by purchaser in failing to call for his deed.

As authority for the first proposition, see 27 Am. & Eng. Ency. of Law, p. 982, citing numerous decisions, and stating the rule as follows: "The general rule is that until the expiration of the time for redemption and delivery of a deed, the title to land sold for taxes remains with original owner, and the purchaser acquires only a lien for the amount of his bid, with interest, penalties, etc." The Iowa court has passed repeatedly on this question, and the view entertained is expressed as follows: "An action by the holder of a tax deed to recover possession of property sold for delinquent taxes is barred after the expiration of five years from the time when he became entitled to a deed; in other words, a deed made more than five years after the expiration of the redemption, cannot be made the basis of the assertion of an affirmative right." *Doud v. Blood*, 89 Iowa 237. Where the tax purchaser failed for more than eleven years to apply for his deed, it was held, that the owner would be justified in presuming an abandonment of his right thereto by the tax purchaser, and that the latter could not afterwards defeat the title of the owner's grantee. Said the court: "Without holding that a deed could not, after so long a lapse of time, be executed under any state of facts, we are of the opinion that the presumption exists that the purchaser has abandoned his right to a deed; certainly those dealing with the owner of the land may presume such an aban-

donment, and that the deed will not be called for by the purchaser. They would be authorized to purchase and pay for the land upon this presumption and the purchaser at the tax sale could not afterwards take a deed and defeat thereon the title they acquire." *Ockendon v. Barnes*, 43 Iowa 617.

In *Crosthwait v. Byington*, 11 Iowa 532, it was held, that tax sale created between the purchaser and the owner the relation of mortgagee and mortgagor, and until foreclosure the right of possession remained in owner. A tax sale gives no right to enter upon the land sold, certainly not until the time for redemption has expired, and no color of title that would extend his possession, constructively, beyond the limits of the land actually occupied, and the purchaser's color of title must be restricted to the time of obtaining deed. *Wing v. Hall*, 47 Vt. 182. Under the Wisconsin statute a tax-title claimant cannot maintain an action to recover the possession of timber cut upon the land before the issuance of a tax deed. *Lacy v. Johnson*, 58 Wis. 414. The purchaser has no right, title or interest in land sold for taxes until the usual time for redemption has elapsed and deed executed. *Hibbard v. Brown*, 51 Ala. 469. A tax deed will be void if issued prematurely, or if obtained after the right to it has been barred. *Cooley on Taxation* (3d Ed.), p. 993. "Neither the legal nor equitable title to land sold for taxes, vests in the purchaser until the execution and delivery of the tax deed; until that time the owner retains the right of possession and all other incidents of title; but the purchaser has a statutory lien upon the land for the amount of the purchase money, with interest and penalties, which lien, after the time for redemption has elapsed, will be foreclosed by operation of law, and thereupon the execution of the tax deed will invest the purchaser with a complete and indefeasible title." *Black on Tax Titles*, § 322. Said Thompson, J., in *Shalemiller v. McCarty*, 55 Pa. State 186: "The purchaser at a tax sale is not invested with any title whatever, because the owner's title is not divested. If the owner's title be not divested, the incidents of title remain, one of which is, in the absence of actual possession, to maintain trespass. This exists up to the last moment before the two years have closed in (the period of redemption). Up to that time he would not be a trespasser by entering upon the land * * * and doing any act

affecting the freehold." It would appear that this jurist has overstated his conclusion by inferring that the expiration of the redemption period, *ipso facto*, divests the owner of title. If the owner's title is divested when the bar of redemption operates, where does it go? When does absolute forfeiture occur, in the absence of the execution of a deed; when the land is sold; when the time for redemption expires, or at either time? Certainly the title does not invest in the purchaser when the limitation for redemption ceases to run, by that act alone, for the statutes of West Virginia and Virginia both expressly provide that the purchaser is not completely vested with the owner's title until the proper execution of a deed. W. Va. Code, § 20, ch. 31; Va. Code, § 661; *Summers v. Kanawha County*, 26 W. Va. 159.

Is it not true and consonant with reason that the owner's title continues undisturbed, notwithstanding his right to redeem is barred by the lapse of the statutory period, until the purchaser exercises his affirmative right in calling for a deed to the land? If the purchaser fails to enforce his right, and waives the lien he has upon the land, it seems reasonable that a reversion should operate to reconfirm the title in the owner. It is submitted that the purchaser at a tax sale acquires no title, legal or equitable, to the land between the time of sale and execution of deed under either the West Virginia or Virginia statutes. Section 20, ch. 31, W. Va. Code, provides that "such deed shall be valid and sufficient to pass to the grantee therein the legal and *equitable title* to the real estate therein mentioned." Section 661, Va. Code, parallel statute. Why should it be provided that the tax deed passes equitable title to the grantee therein, if it were the case that by the mere purchase alone, the purchaser acquires an equitable interest?

While it is true in a certain sense that the title of the owner is forfeited, and abates to the interest of the State, when the land is returned delinquent and sold for nonpayment of taxes, still the lien of the State is satisfied when sale is made and payment of delinquent taxes received from the purchaser. What, then, is the nature of the State's title? It certainly is not absolute and indefeasible, for it can be divested of what interest it may have, after sale, upon the owner redeeming within the statutory time, or upon the purchaser demanding a deed within five years from

the date of sale. Neither can it be well said that the State holds the land as trustee for the purchaser, dependent upon his bringing himself within the terms of the statute by perfecting the sale. If this be true, the State, likewise, occupies the position of trustee for the owner upon similar grounds. Does the mere inactivity of the owner and purchaser cause the inchoate right or interest of the State to ripen into a perfect title? Sections 31, 32, ch. 31, W. Va. Code, provide in what manner the State may and shall acquire title to delinquent lands—*i. e.*, when no person bids the amount of taxes due. If mere forfeiture vests title in the State, this mandatory statute would seem to be nugatory, and the following terms of the statute would seem to be of no effect: "All such estate, right, title and interest in the real estate (upon purchase by the State) as would have vested in an individual purchaser thereof at such sale, who had proper deeds therefor, shall be by the *sale and purchase on behalf of the State*, vested in the State."

The clear trend of the authorities, as well as the better logic, seem to uphold the statement of the first proposition; *viz.*, that the owner continues to hold the title until the purchaser exercises his affirmative right in calling for the execution of a deed. If the purchaser allows the time, within which he may claim a deed, to lapse without taking some definite step toward perfecting his title as the statute directs, he must bear the consequences of his own laches—*quod quis ex culpa sua damnum sentit non intelligitur, repetere non potest*—he who suffers a damage by his own fault is not held to suffer a damage. Granting that the purchaser has an equitable title, it should not be allowed to stand against that of the owner, for "where two titles concur, the best is preferred."